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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/758,227	01/16/2004	Masafumi Masuda	247863US90	5743
22850	7590	06/15/2009	EXAMINER	
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C.			HUYNH, NAM TRUNG	
1940 DUKE STREET			ART UNIT	PAPER NUMBER
ALEXANDRIA, VA 22314			2617	
			NOTIFICATION DATE	DELIVERY MODE
			06/15/2009	ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/758,227	MASUDA ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	NAM HUYNH	2617	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

1) Responsive to communication(s) filed on 17 February 2009.

2a) This action is **FINAL**.                            2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

4) Claim(s) 4-16 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 4-16 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.

    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

1) <input type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____ .
3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)	5) <input type="checkbox"/> Notice of Informal Patent Application
Paper No(s)/Mail Date _____ .	6) <input type="checkbox"/> Other: _____ .

## DETAILED ACTION

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 2/17/09 has been entered.

### ***Response to Amendment***

This office action is in response to amendment filed on 6/18/2008. Of the previously presented claims 4-16; claims 4, 10, and 11 have been added.

### ***Claim Rejections - 35 USC § 112***

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 4-16 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 4 recites that a channelization code for a mobile station is selected from a **first set** of channelization codes belonging to a primary scrambling code in a cell of a

first frequency, then a **first set** of channelization codes belonging to a primary scrambling code in a cell of a second frequency. The Examiner submits that this is indefinite because the "**first set**" is used for both the cell of a first frequency and a cell of the second frequency which implies that the same set is used for both cells. This indefiniteness can also be found in the subject matter regarding the "**second set**". Therefore for examining purposes, the claim will be interpreted as selecting a channelization code for a mobile station from a first set belonging to a primary scrambling code, then selecting from a second set belonging to a secondary scrambling code.

Claims 10 and 11 are rejected as applied to claim 4; claims 5-8 are rejected based on their dependence on claim 4, and claims 12-16 are rejected based on their dependence on claim 10.

### ***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

5. Claims 4-16 are rejected under 35 U.S.C. 102(a) as being anticipated by Karjalainen (US 2002/0176438).

Regarding claim 4, Karjalainen teaches a radio control device for controlling a plurality of base stations, comprising (paragraphs 21, 29):

a plurality of channelization code selection means for selecting in the following order, a channelization code for a mobile station

(1) a first set of channelization codes belonging to a primary scrambling code (paragraphs 21, 24; code level with free branch)  
(2) a second set of channelization codes belonging to a secondary scrambling code (paragraphs 21, 24; level below selected branch),  
assignment means for assigning a selected channelization code to the mobile station (paragraph 29; allocating spread codes to cells).

Regarding claims 5 and 12, Karjalainen teaches each frequency band is associated with a plurality of channelization code trees generated by OVSF (Orthogonal Variable Spreading Factor), and

the first set of codes is a first code tree and the second set of codes is a second code tree (paragraphs 24-27).

Regarding claims 6 and 13, Karjalainen teaches the plurality of frequency bands are each assigned to a respective cell (paragraph 29 and figure 3; the RNC allocates codes for respective base stations).

Regarding claims 7 and 14, Karjalainen teaches the plurality of frequency bands are each assigned to a respective sector (paragraph 23).

Regarding claims 8 and 15, Karjalainen teaches at least two cells overlap in space (figure 3).

Regarding claims 9 and 16, Karjalainen teaches the first set of channelization codes is a set of primary codes and the second set of channelization codes is a set of secondary codes (paragraphs 21, 24).

Regarding claims 10 and 11, the limitations are rejected as applied to claim 4.

### ***Response to Arguments***

6. Applicant's arguments with respect to claims 4-16 have been considered but are not persuasive.

Applicant asserts that Karjalainen does not teach steps 1-4 for selecting a channelization code for the mobile terminal. The Examiner respectfully disagrees and asserts that based on the claim language and 112 rejection above, the claim only presents two sets for which a channelization code is chosen from. A "first set" and a "second set" respectively. Karjalainen teaches the selection of a channelization code from a first set and a second set in paragraphs 21 and 24, wherein a spreading code is selected based on a code tree. Therefore Karjalainen teaches the claim limitations set forth and the rejection has been maintained.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to NAM HUYNH whose telephone number is (571)272-5970. The examiner can normally be reached on 8 a.m.-5 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, George Eng can be reached on 571-272-7495. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/George Eng/  
Supervisory Patent Examiner, Art Unit 2617

/Nam Huynh/  
Examiner, Art Unit 2617